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DRAFTING OF A DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[February/March 1994]

Lifting restrictions on human rights advocacy: a priority for the international human rights movement

1. A critically important challenge in promoting and protecting human rights worldwide is how to support and strengthen the development of local human rights non-governmental organizations (NGOs). Effective domestic implementation of human rights law depends in large part on the ability of these groups to survive and to flourish. And it is their voice, above all, which must be heard in international debates on human rights issues, in order to inform and sensitize the discussion, and thereby to contribute to a strengthening of international enforcement mechanisms.

2. Human rights NGOs have a critical educational function, informing communities of their rights, and of the Government's obligation to respect them. Many of these groups also help those whose human rights have been

violated gain redress, where possible through the legal system, or by calling publicly for official accountability for human rights violations. The nature of their work means that these groups are rarely popular with repressive, rights-violating Governments. The very existence of such groups can therefore be a useful indicator of Governments' commitment to respect human rights principles within their own societies.

3. The legal framework within which non-governmental human rights organizations operate varies from country to country, but there are common features conducive to the functioning of such organizations. One important element of a permissive environment for such groups is that they be allowed to form and operate without being subjected to a burdensome process of prior approval. The State should have powers to dissolve or restrict organizations which engage in illegal activities, but punitive measures against organizations should be pronounced solely by an independent judicial body after a public hearing, and not as the administrative decision of a government official.

4. In recent years, various United Nations and other international bodies have stressed the importance of supporting local human rights organizations. Unfortunately, they have devoted inadequate time or resources to turning this principle into effective practical action.

5. While the United Nations is concerned with international human rights promotion on a global scale, its efforts have now been joined by Governments which have established human rights promotion as an important aspect of their foreign policies.

6. A central part of the assessment of any country's human rights record should be based on an evaluation of its non-governmental human rights movement. Additionally, a primary source of the information on which such evaluations are based should be independent human rights monitors within each country, as opposed to the official bodies established by Governments with a nominal responsibility for human rights issues.

7. The problem is simple. Many Governments fear, and therefore seek to limit, criticism of their actions. Governments cannot complain of interference in their internal affairs when it is domestic groups that raise the objections. Domestic human rights groups are viewed as a serious threat by many Governments, precisely because they expose official wrong-doing and press for accountability. And, unlike international bodies, these local groups are vulnerable to governmental measures to limit or control their actions.

8. In some countries, laws governing the establishment and operation of non-governmental associations are over-broad and violate relevant international standards. In other places, the laws are applied against independent human rights groups in an arbitrary and capricious manner.

9. Some Governments have enacted legislation or passed regulations which either prevent non-governmental human rights organizations from being legally established, or prevent them from operating effectively. Other Governments seek to control the effectiveness of these groups by placing restrictions on

fundraising and the receipt of technical assistance and support. Other Governments have sought to control the activities of domestic human rights groups by closing down their access to officially controlled media outlets. With many Governments enjoying virtually monopoly control over mass media outlets this severely impedes the ability of human rights organizations to disseminate their findings. Another tactic is to deny human rights activists freedom of movement, thereby preventing them from carrying out their monitoring and investigative work effectively.

10. The most extreme form of government pressure against human rights NGOs by government agents are physical threats and other acts of intimidation. In some countries, human rights advocates are routinely detained or violently attacked by government armed and security forces.

11. While various United Nations bodies have given increased consideration to attacks against human rights advocates in recent years, such consideration is reactive. It often fails to address the underlying assumptions by many Governments that human rights advocacy is not a legitimate activity, entitled to protection by the law.

12. The legal framework for enhanced international attention to the work of national human rights NGOs is largely in place. Article 20 of the Universal Declaration of Human Rights states that everyone has the right to freedom of association. The International Covenant on Civil and Political Rights (ICCPR), a binding treaty that has now been ratified by 117 countries, further elaborates on this protection. In practice, the burden often falls initially on the international community, in particular the United Nations, to question any attempts by Governments to curtail the work of independent human rights organizations under the pretext of protecting national security, and thereby ensure that the Government's discretion is not abused.

13. In 1992, the Commission on Human Rights had its first reading of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. As it stands, the draft explicitly elaborates on the rights of individuals and non-governmental organizations to know and act on their rights. It reiterates the guarantees of free speech, assembly and association.

14. Nonetheless, with respect to human rights NGOs, the current version of the draft declaration is subject to the same limiting language as the ICCPR. It permits Governments to limit these rights in situations where it seeks to meet "the just requirements of morality, public order and the general welfare in a democratic society".

15. Existing international standards provide a sufficient basis for the United Nations to act to protect the right of local human rights NGOs to operate freely. At this juncture, the principal attention of the United Nations should turn to effective implementation of these international guarantees.

16. While much of the governmental debate leading up to the World Conference on Human Rights focused on differences between nations of the North and the

South, too little attention was paid to conflict between Governments and national non-governmental advocates who seek to hold their own Governments accountable.

17. As it seeks to help set a human rights agenda for the future, the United Nations should address issues relating to non-governmental human rights organizations in several ways. The following recommendations could usefully be adopted by the United Nations:

1. The United Nations should complete preparatory work, and adopt the declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, currently in draft form.

2. The United Nations should enhance its capacity to monitor restrictions placed by States on the ability of independent groups of private individuals to engage in activities to promote and protect universally recognized human rights and fundamental freedoms. This could be achieved by the appointment of a special rapporteur on the right to protect and promote universally recognized human rights and fundamental freedoms. The Special Rapporteur would be charged with gathering information from around the world about restrictions placed on human rights advocates and their organizations. In each country, the Special Rapporteur's primary sources of information would be domestic human rights advocates.

3. Governments should facilitate increased participation by independent local human rights organizations in the human rights activities of the United Nations.

4. Local and international human rights NGOs should be enabled to participate meaningfully and effectively in international meetings such as the World Conference. This should include being granted access to formal meetings, and being provided with necessary documentation. Written and oral interventions by NGOs should be allowed.

5. United Nations departments and specialized agencies should review their contacts with NGOs with a view to strengthening such contacts, and to seeking out, considering and acting on pertinent information received from such groups in a timely fashion.

6. The United Nations should expressly recognize the unique contribution of lawyers in the protection and promotion of human rights, and should call on Governments to afford them the necessary guarantees of independence to enable them to continue their work without fear or hindrance.